

UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF NEW YORK

ADDED SERVICE

SAP AG and SAP AMERICA, INC.,

Plaintiffs,

v.

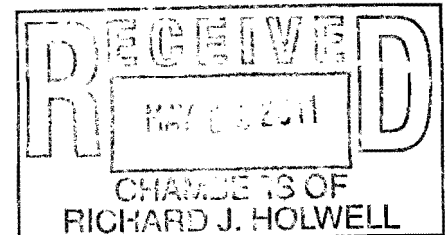
DATATERN, INC.,

Defendant.

Civil Action No. 1:11-cv-02648-RJH

STIPULATION AND ~~PROPOSED~~  
ORDER

*[Handwritten signature]*



HOLWELL, J.

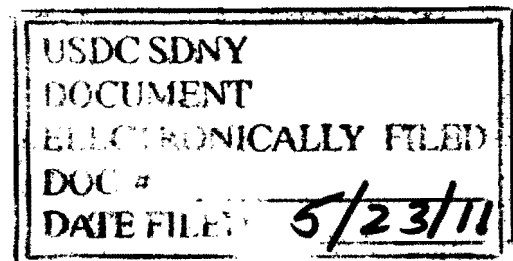
WHEREAS, on April 18, 2011, Plaintiff SAP AG and SAP America, Inc. ("SAP") filed a Complaint for Declaratory Judgment (the "Complaint") in the District Court for the Southern District of New York against Defendant DataTern, Inc. ("DataTern");

WHEREAS, on April 18, 2011, the Court issued a Summons to DataTern (the "Summons");

WHEREAS, on April 25, 2011, SAP filed an Affidavit of Service with the Court stating that, on April 20, 2011, it served the Summons and Complaint on DataTern at its New York office;

WHEREAS, pursuant to Federal Rule of Civil Procedure 12(a)(1), DataTern's response to the Complaint is due by May 11, 2011;

WHEREAS, DataTern, by and through its undersigned counsel, has requested an extension of time to move, answer, or otherwise respond to the Complaint through and until June 10, 2011;



WHEREAS, as a condition of entering into this Stipulation, DataTern, through its counsel, (i) waives any defenses based on the insufficiency of process or insufficiency of service of process of the Summons and Complaint; and (ii) agrees not to argue in any motion to dismiss the Complaint, motion(s) to transfer and/or stay the above-captioned litigation, and/or in any other filing in this litigation or elsewhere that any events or developments that have occurred or may occur in any other litigation between May 12, 2011 and June 10, 2011, including in the District Court for the Eastern District of Texas, constitute grounds to dismiss, transfer, stay or otherwise rule against SAP in this litigation;

**IT IS HEREBY STIPULATED AND AGREED**, by and among the undersigned counsel, that:

- (1) SAP and DataTern have authorized their respective counsel to enter into this Stipulation;
- (2) DataTern waives any defenses based on the insufficiency of process or insufficiency of service of process of the Summons and Complaint;
- (3) DataTern agrees that it shall not argue in any motion to dismiss the Complaint, any motion(s) to transfer and/or stay the above-captioned litigation, and/or in any other filing in this litigation or elsewhere that any events or developments that have occurred or may occur in any other litigation between May 12, 2011 and June 10, 2011, including in the District Court for the Eastern District of Texas, constitute grounds to dismiss the Complaint or to transfer or stay these proceedings or otherwise constitute grounds to rule against SAP in this litigation;
- (4) DataTern's time to move, answer, or respond to the Complaint is extended from May 11, 2011 through and until June 10, 2011;

- (5) If DataTern files any motion, pleading or other response to the Complaint and SAP wishes to oppose or respond to such papers, SAP shall have 21 days from the date of service of such filing(s) to oppose or otherwise respond;
- (6) If DataTern wishes to respond to SAP's submission filed pursuant to Paragraph 5 above, DataTern shall have 15 days from such filing's date of service to reply to any SAP opposing submission;
- (7) The calculations of time set forth in Paragraphs 5 and 6 immediately above shall be done pursuant to Federal Rule of Civil Procedure 6(a)(1); and
- (8) The Stipulation may be signed in counterparts, each of which when signed shall be an original, but all of which shall together constitute one and the same instrument.

An electronic copy of this stipulation shall be deemed an original.

Dated: May 4, 2011  
New York, New York

OF COUNSEL:

Steven J. Rocci  
(rocci@woodcock.com)  
Aleksander J. Goranin  
(agoranin@woodcock.com)  
Daniel J. Goettle  
(dgoettle@woodcock.com)

WOODCOCK WASHBURN LLP  
Cira Centre, 12<sup>th</sup> Floor  
2929 Arch Street  
Philadelphia PA 19104-2891  
Tel: +1 215 568 3100  
Fax: +1 215 568 3439

By: \_\_\_\_\_

Matthew Taylor  
(MATaylor@duanemorris.com)  
John Dellaportas  
(Dellajo@duanemorris.com)  
Evangelos Michailidis  
(EMichailidis@duanemorris.com)

DUANE MORRIS LLP  
1540 Broadway  
New York, New York 10036  
Tel: +1 212 692 1000  
Fax: +1 212 692 1020

*Attorneys for SAP AG and SAP America, Inc.*

By: Timothy J. Haller

Timothy J. Haller  
(haller@nshn.com)  
Gregory P. Casimer (*pro hac pending*)  
(casimer@nshn.com)  
Gabriel I. Opatken (*pro hac pending*)  
(gopatken@nshn.com)

NIRO, HALLER & NIRO  
181 West Madison Street, Suite 4600  
Chicago, Illinois 60602  
Tel: +1 312 236 0733  
Fax: +1 312 236 3137

*Attorneys for DataTern, Inc.*

SO ORDERED this 18 day of May, 2011

Richard J. Holwell  
HONORABLE RICHARD J. HOLWELL  
UNITED STATES DISTRICT JUDGE